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**To:** Lafayette Street Partners, LLC ([sdouglass@frosszelnick.com](mailto:sdouglass@frosszelnick.com))  
**Subject:** TRADEMARK APPLICATION NO. 78678314 - CHINATOWN BRASSERIE - LAFA 0507832  
**Sent:** 10/25/07 10:12:11 AM  
**Sent As:** ECOM106@USPTO.GOV  
**Attachments:**

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 78/678314

**MARK:** CHINATOWN BRASSERIE

**CORRESPONDENT ADDRESS:**  
SUSAN UPTON DOUGLASS  
FROSS ZELNICK LEHRMAN & ZISSU,

P.C.

866 UNITED NATIONS PLZ  
NEW YORK, NY 10017-1822

**GENERAL TRADEMARK INFORMATION:**  
<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Lafayette Street Partners,  
LLC

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

LAFA 0507832

**CORRESPONDENT E-MAIL ADDRESS:**  
[sdouglass@frosszelnick.com](mailto:sdouglass@frosszelnick.com)

**REQUEST FOR RECONSIDERATION DENIED WITH RESPECT TO  
REFUSAL UNDER SECTION 2(e)(3) OF THE TRADEMARK ACT**

**ISSUE/MAILING DATE: 10/25/2007**

Applicant is requesting reconsideration of a final refusal issued/mailed on April 10, 2007.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written as it pertains to the refusal to register under Section 2(e)(3) of the Trademark Act, since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The refusal to register under Section 2(a) of the Trademark Act is withdrawn, based upon newly amended TMEP Section 1210.05(a) and *In re South Park Cigar, Inc.*, 82 USPQ2d 1507, 1509, n.3 (TTAB 2007).

The refusal to register under Section 2(e)(3) of the Trademark Act is adhered to.

The record shows that New York's Chinatown is a well known geographic location. The record also shows that the location is essentially known for its restaurant services and Chinese cuisine, and that, according to the applicant itself, the applicant's restaurant is not located there and does not even provide delivery services there. Moreover, the fame of Chinatown for its cuisine and restaurants makes the misrepresentation in the mark a material factor in the consumer's decision to purchase the services. New York City is a tourist destination where potential purchasers would be deceived by applicant's mark into making dinner reservations based upon the false presumption that the applicant was located in Chinatown or had some connection thereto. Further, the type of food that applicant's restaurant serves is the type of food that a purchaser would expect to come from Chinatown.

Applicant's request for reconsideration claims that "no geographic connotation" was intended by the applicant's mark and that "everyone understands that the name of the restaurant likely suggests the menu theme and not a physical location." In support of this contention, applicant includes references to various other restaurants having geographic terms in their names. First, many of the listings in applicant's exhibits do not provide an adequate context for comparison since the marks have not been subject to Office scrutiny regarding any possible statutory prohibition to registration. Further, there is no telling whether the restaurants listed in the third-party registrations and in applicant's other exhibits actually have ties to the places named, and if they don't, what evidence could be available to show a sufficient services/place association to support a refusal like that herein in each of the cases. The registrability of the listed marks and the files of the third-party registrations are not before the Office.

The fact that other parties may use geographic terms as parts of their marks does not prove that the term CHINATOWN in this case would be recognized as identifying a theme, as opposed to a geographic location. Under applicant's theory, the existence of such restaurant names automatically translates into a presumption that all geographic terms are "themes" as applied to restaurant services, eliminating their significance as geographic indicators. Yet, case law dictates that geographic locators as applied to restaurant services can still be primarily geographically deceptively misdescriptive. For example, in *In re Consolidated Specialty Restaurants, Inc.*, 71 USPQ2d 1921 (TTAB 2004), the mark COLORADO STEAKHOUSE and DESIGN was held geographically deceptively misdescriptive of restaurant services, notwithstanding an argument by the applicant quite similar to that made by the applicant herein. There the applicant submitted evidence of third-party registrations similar in nature to the applicant's evidence herein, claiming that they show that "a customer who visits a restaurant having a geographic name and theme is expecting to find an atmosphere, ambience or décor that suggests to them the type of restaurant they would expect to find in the particular city or region identified in the name"; and that "the name, therefore, provides an association with the geographic identifier by way of its concept or theme only." The Board specifically rejected the notion that the existence of the third-party registrations establishes what consumers perceive or expect regarding the ambiance and décor of restaurants, and noted that it is not privy to the records in the third-party registration files.

The evidence herein shows that Chinatown is noted for its abundant restaurants and Chinese cuisine, the type of cuisine dealt by applicant at its restaurant. Visitors to New York City could easily choose applicant's restaurant based upon the false geographic representation in the mark, believing that the restaurant is located in Chinatown. Moreover, even those who know ahead of time that the restaurant is not located in Chinatown would make a meaningful connection between the restaurant and Chinatown because of the type of cuisine being offered by the applicant. Purchasers would have a heightened services/place association because the type of food featured by the applicant is the very type often served or featured in the place named, thus giving purchasers the impression that the food served at the restaurant came from the place named. See *Id.*, at USPQ2d 1928.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). Since applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

/Steven Foster/  
Steven Foster, Trademark Attorney  
Law Office 106  
(571) 272-9318  
Fax number for the Law Office: (571) 273-9106

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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**IMPORTANT NOTICE**  
**USPTO OFFICE ACTION HAS ISSUED ON 10/25/2007 FOR**  
**APPLICATION SERIAL NO. 78678314**

Please follow the instructions below to continue the prosecution of your application:

**VIEW OFFICE ACTION:** Click on this link [http://portal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=78678314&doc\\_type=REC&mail\\_date=20071025](http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=78678314&doc_type=REC&mail_date=20071025) (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

**PLEASE NOTE:** The Office action may not be immediately available but will be viewable within 24 hours of this notification.

**RESPONSE MAY BE REQUIRED:** You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from **10/25/2007**.

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**